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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,110	09/09/2003	Hans David Hoeg	04413-P0005A	9223
24126	7590	02/17/2009		EXAMINER
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			SMITH, PHILIP ROBERT	
			ART UNIT	PAPER NUMBER
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			02/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### **Withdrawal of Finality**

- [01] The Office action of 8/5/08 contained an error and is hereby withdrawn. Applicant will be provided with either a substitute final rejection or a notice of allowability.
- [02] Specifically, the Office action of 8/5/08, in response to amendment, incorporated an improper reference: Hale (2003/0114730). Applicant notes that the specification states priority to a provisional application 60/408,979; and that this alone is sufficient according to CFR 1.78(a)(5)(iii):
  - (iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title.
- [03] Therefore, the rejection of claims 14-17, 19, 21-25 & 27-28 as being rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (6,702,736) in view of Hale (2003/0114730) and in further view of Fukunaga (6,346,940), and the rejection of claims 18 & 26 as being rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (6,702,736) in view of Hale (2003/0114730) and Fukunaga (6,346,940) and in further view of Schulz (5,920,395), are withdrawn.

### **Conclusion**

- [04] A new Office action with a new period of reply will be forthcoming.
- [05] Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP R. SMITH whose telephone number is (571)272-6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.
- [06] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.

[07] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip R Smith/

Examiner, Art Unit 3739

/Linda C Dvorak/

Supervisory Patent Examiner, Art Unit 3739